

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 107

HOUSE BILL 2077

AN ACT

AMENDING SECTION 38-797.07, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-797.07, Arizona Revised Statutes, is amended to
3 read:

4 38-797.07. LTD program benefits; limitations; definitions

5 A. The LTD program is subject to the following limitations:

6 1. Except as provided in paragraph 7 OF THIS SUBSECTION, monthly
7 benefits shall not exceed two-thirds of a member's monthly compensation at
8 the time disability commences, reduced by:

9 (a) Sixty-four per cent of social security disability benefits that
10 the member or the member's dependents are eligible to receive.

11 (b) Eighty-three per cent of social security retirement benefits that
12 the member is eligible to receive.

13 (c) All of any workers' compensation benefits.

14 (d) All of any payments for a veteran's disability if both of the
15 following apply:

16 (i) The veteran's disability payment is for the same condition or a
17 condition related to the condition currently causing the member's total
18 disability.

19 (ii) The veteran's disability is due to, or a result of, service in
20 the armed forces of the United States.

21 (e) All of any other benefits by reason of employment that are
22 financed partly or wholly by an employer, including payments for sick leave.

23 (f) Fifty per cent of any salary, wages, commissions or ~~similar~~ OTHER
24 EMPLOYMENT RELATED pay that the member receives or is entitled to receive
25 from any gainful employment in which the member actually engages.

26 2. Monthly benefits are not payable until a member has been totally
27 disabled for a period of six consecutive months.

28 3. Monthly benefits are not payable to a member who is receiving
29 retirement benefits from ASRS.

30 4. Monthly benefits are not payable to a member whose disability is
31 due to, or a result of, any of the following:

32 (a) An intentionally self-inflicted injury.

33 (b) War, whether declared or not.

34 (c) An injury incurred while engaged in a felonious criminal act or
35 enterprise.

36 (d) An injury or sickness for which the member received medical
37 treatment within three months before the date of the member's coverage under
38 the LTD program. This subdivision does not apply to a member who either:

39 (i) Has been an ~~employee~~ ACTIVE MEMBER of an employer for twelve
40 continuous months.

41 (ii) Is employed by an employer as of June 30, 1988.

42 5. Monthly benefits cease to be payable to a member at the earliest
43 of the following:

44 (a) The date the member ceases to be totally disabled.

45 (b) The date the member:

- 1 (i) Ceases to be under the direct care of a doctor. or
2 (ii) Refuses to undergo any medical examination OR REFUSES TO
3 PARTICIPATE IN ANY WORK REHABILITATION PROGRAM FOR WHICH THE MEMBER IS
4 REASONABLY QUALIFIED BY EDUCATION, TRAINING OR EXPERIENCE AND THAT IS
5 requested by the insurance company OR CLAIMS ADMINISTRATOR THAT IS selected
6 by the board to administer the LTD program.
- 7 (c) The date the member withdraws employee contributions with interest
8 and ceases to be a member.
- 9 (d) The later of the following:
10 (i) The member's normal retirement date.
11 (ii) The month following sixty months of payments if disability occurs
12 before sixty-five years of age.
13 (iii) The month following attainment of seventy years of age if
14 disability occurs at sixty-five years of age or after but before sixty-nine
15 years of age.
16 (iv) The month following twelve months of payments if disability
17 occurs at or after sixty-nine years of age.
- 18 (e) IF THE MEMBER IS CONVICTED OF A CRIMINAL OFFENSE AND SENTENCED
19 TO MORE THAN SIX MONTHS IN A JAIL, PRISON OR OTHER PENAL INSTITUTION, THE
20 FIRST DAY OF THE MONTH FOLLOWING THE FIRST THIRTY CONTINUOUS DAYS OF THE
21 MEMBER'S CONFINEMENT FOR THE REMAINDER OF THE CONFINEMENT.
- 22 6. Monthly benefits are payable under the LTD program only for
23 disabilities that commence on or after July 1, 1988.
- 24 7. The minimum benefit for a member who is entitled to receive
25 benefits under the LTD program is fifty dollars per month.
- 26 8. Members are eligible to receive the benefits and payments described
27 in paragraph 1 OF THIS SUBSECTION, and the reductions provided by paragraph
28 1 OF THIS SUBSECTION apply even though the benefits are not actually paid as
29 follows:
- 30 (a) For primary or AND dependent social security benefits, the members
31 are eligible for the benefits until the benefits are actually awarded, or if
32 the benefits are denied, until ~~notice of the denial of the appeal of the~~
33 ~~first denial is received~~ THE MEMBER PURSUES THE SOCIAL SECURITY APPEAL
34 PROCESS THROUGH A HEARING BEFORE A SOCIAL SECURITY ADMINISTRATIVE LAW JUDGE
35 OR UNTIL THE INSURANCE COMPANY OR CLAIMS ADMINISTRATOR DETERMINES THAT THE
36 MEMBER IS NOT ELIGIBLE FOR SOCIAL SECURITY DISABILITY BENEFITS.
- 37 (b) For benefits and payments from any other source provided in
38 paragraph 1 OF THIS SUBSECTION, the members are eligible for the benefits if
39 it is reasonable to believe that the benefits will be paid on proper
40 completion of the claim or would have been paid except for the failure of the
41 member to pursue the claim in time.

1 9. A member shall be considered totally disabled if:

2 (a) During the first thirty months of a period of disability, the
3 member is unable to perform all duties of the position held by the member
4 when the member became totally disabled.

5 (b) For a member who has received monthly benefits for twenty-four
6 consecutive months WITHIN A FIVE-YEAR PERIOD, ~~that a~~ THE member is unable to
7 perform any work for compensation or gain for which the member is reasonably
8 qualified by education, training or experience in an amount at least equal
9 to the scheduled benefits prescribed in paragraph 1 of this subsection.

10 B. A member who receives monthly benefits from the LTD program is
11 entitled to receive service credit pursuant to article 2 of this chapter from
12 the time disability commences until benefits cease to be payable, except that
13 for a member who receives monthly benefits from the LTD program on or after
14 June 30, 1999 the number of years of service credited to the member's
15 retirement account during the period the member receives LTD benefit payments
16 shall not cause the member's total credited service for retirement benefits
17 to exceed the greater of thirty years or the total years of service credited
18 to the member's retirement account on the commencement of disability.

19 C. THIS SECTION DOES NOT PROHIBIT A MEMBER WHOSE DISABILITY HAS BEEN
20 ESTABLISHED TO THE SATISFACTION OF THE BOARD FROM RELYING ON TREATMENT BY
21 PRAYER THROUGH SPIRITUAL MEANS IN ACCORDANCE WITH THE TENETS AND PRACTICE OF
22 A RECOGNIZED CHURCH, RELIGIOUS DENOMINATION OR NATIVE AMERICAN TRADITIONAL
23 MEDICINE BY A DULY ACCREDITED PRACTITIONER OF THE CHURCH, DENOMINATION OR
24 NATIVE AMERICAN TRADITIONAL MEDICINE WITHOUT SUFFERING REDUCTION OR
25 SUSPENSION OF THE MEMBER'S MONTHLY BENEFITS.

26 ~~C.~~ D. For the purposes of this section:

27 1. "Received medical treatment" means that the member consulted with
28 or received the advice of a licensed medical or dental practitioner,
29 including advice given during a routine examination, and it includes
30 situations in which the member received medical or dental care, treatment or
31 services, including the taking of drugs, medication, insulin or similar
32 substances.

33 2. "Social security" and "social security disability" includes the
34 railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States
35 Code sections 231 through 231u).

APPROVED BY THE GOVERNOR APRIL 19, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2004.